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In re Application of : **OFFICE OF PETITIONS**
Pugaczewski, et al. :
Application No. 09/469,206 : **DECISION ON PETITION**
Filed: December 21, 1999 :
Attorney Docket No. 020366- :
062610US :

This is a decision on the petition under 37 CFR 1.181, filed September 14, 2010, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on August 22, 2005, stating that this application is abandoned for failure to take appropriate action in a timely manner after the November 26, 2004, decision of the Board of Patent Appeals and Interferences (BPAI). Therefore, the proceedings as to the rejected claims were terminated.

Petitioner contends that the holding of abandonment of this application was improper. In summary, petitioner states that the application was improperly abandoned pursuant to the BPAI decision mailed November 26, 2004, without consideration of the "Decision on Request for Rehearing" mailed May 18, 2005.

A review of the application file history reveals that a "Decision on Appeal" was mailed November 26, 2004, affirming the rejections of the examiner as to all pending claims. On January 21, 2005, within two months of the BPAI decision, applicants filed a "Request for Rehearing by the Board of Patent Appeals and Interferences." In response on, May 18, 2005, the BPAI mailed "Decision on Request for Rehearing" reversing the rejection of claims 1 and 4 and the rejections of claims 2, 3, and 5-10. Notwithstanding, a Notice of Abandonment was mailed on August 22, 2005, indicating that application was abandoned because the period for seeking court review of the BPAI decision mailed November 26, 2004, expired.

The record demonstrates that applicants filed a request for rehearing pursuant to 37 CFR 41.52 within two months of the mailing date of the original decision of the BPAI. Thereafter, the BPAI granted the request for rehearing and reversed the rejections of the examiner. Accordingly, it is apparent that the imposition of the holding of abandonment based upon the failure to respond to the BPAI decision mailed November 26, 2004, was in error. In fact, in light of the complete reversal of the examiner's rejections, the application should have been directed to the examiner for immediate action. See MPEP 1214.04.

In view of the above, the holding of abandonment is improper and is withdrawn.

This application is being directed to Technology Center, GAU 2145 to be returned to a pending status to await action by the examiner as per the "Decision on Request for Rehearing" mailed May 18, 2005.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

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